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Federal Communications Commission

DA 99-478

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DISPATCHED BY
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Long Beach and Shallotte, North Carolina)

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MM Docket No. 98-149
RM-9331

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 3, 1999

Released: March 12, 1999

By the Chief, Allocations Branch:

1. At the request of Morfield, L.L.C., the Commission has before it the Notice of Proposed Rule Making, 13 FCC Rcd 15350 (1998), proposing the reallocation of Channel 252C3 from Shallotte to Long Beach, North Carolina, as the community's first local aural service, and the modification of its construction permit for Station WAZO(FM) to specify Long Beach as its community of license. The petitioner filed comments reiterating its intention to apply for the channel, if reallocated. No other comments were received.

2. The proposed reallocation of Channel 252C3 from Shallotte to Long Beach was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). Long Beach is an incorporated city with a 1990 U.S. Census population of 3,816 persons. In addition to providing Long Beach with its first local aural transmission service, we noted that the reallocation would not deprive Shallotte of local aural service since it would still have one AM and two FM stations licensed to the community. Further, we noted that the reallocation would not involve the reallocation of a station from a rural to an urbanized area since the 70 dBu contour of Station WAZO(FM) would only cover 4.2% of the Wilmington, North Carolina, Urbanized Area.

3. In the Notice, we pointed out that petitioner's proposal sought to relocate its transmitter site, thus creating areas which would lose reception service as well as areas which would gain reception service. In response to our request for further information concerning the areas and populations which would gain and lose service, petitioner states that Station WAZO(FM) is not yet built and therefore any loss or gain area and population would be theoretical. However, it states that if reallocated, 12,416 people within a 750 square kilometer area would lose service from a Shallotte Station WAZO(FM) while 12,900 people within a 38 square kilometer area would

gain service from a Long Beach Station WAZO(FM). However, it states that the entire population within the loss area is "well-served" already because they currently receive at least eight fulltime aural services.

4. We believe the public interest would be served by reallocating Channel 252C3 from Shallotte to Long Beach, North Carolina. The reallocation will provide Long Beach with its first local aural service, thus fulfilling priority (3) of the Commission's allotment priorities.¹ We recognize that the reallocation will result in a loss of potential service to 12,900 people. However, while we carefully evaluate a proposal that would result in a loss of existing reception service, in this case, Station WAZO(FM) is not built. Therefore, we do not consider the channel's removal from Shallotte as presenting the same concerns with loss of service that would be represented by the removal of an operating station, as it does not represent a service that the public has come to rely upon. See Chatom and Grove Hill, Alabama, 12 FCC Rcd 7664 (1997), and cases cited therein. In accordance with Section 1.420(i) of the Commission's Rules, we will also modify petitioner's construction permit for Station WAZO(FM) to specify Long Beach as its community of license.

5. Channel 252C3 can be allotted to Long Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.6 kilometers (7.2 miles) east to accommodate petitioner's desired transmitter site.²

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 26, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Long Beach, North Carolina	252C3
Shallotte, North Carolina	279C3, 292A

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Morfield, L.L.C. for Station WAZO(FM), IS MODIFIED to specify Long Beach, North Carolina, in lieu of Shallotte, North Carolina, as its community of license, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the

¹ The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

² The coordinates for Channel 252C3 at Long Beach are 33-56-49 North Latitude; 78-00-04 West Longitude.

Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Morfield, L.L.C. permittee of Station WAZO(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau